

OPINION NO. 72-096**Syllabus:**

1. The state may lease ground in interstate highway rest areas to private corporations which will install information centers and will operate them for the purpose of serving the highway-using public and for selling advertising space.

2. The state cannot participate in an initial financial outlay or other financial relationship which would give the state any ownership interest in the corporation operating an information center in an interstate highway rest area.

To: J. Phillip Richley, Director, Dept. of Transportation, Columbus, Ohio
By: William J. Brown, Attorney General, October 18, 1972

Your request for my opinion asks whether the state may contract with a private corporation, which is willing to install information centers in rest areas along the interstate highways of the state and to provide free travel information to motorists, provided it retains the right to sell advertising space in the centers and to collect "travel-agent" commissions on hotel and motel reservations made through the centers. It is proposed the state lease a portion of its land in the rest areas to the company, and that it provide sanitary facilities for the company's employees. Under an alterna-

tive proposal the state would invest in the initial outlay in return for a fixed percentage of the gross advertising receipts. You wish to know if such activities would contravene Section 5515.07, Revised Code.

Section 5515.07 reads in part as follows:

"No person, firm, corporation, or association shall engage in selling or offering for sale or exhibiting for purposes of sale, goods, products, merchandise, or services within the bounds of rest areas within the limits of the right-of-way of interstate highways and other state highways, or in other areas within the limits of the right-of-way of interstate highways, except pursuant to a permit from the director of highways issued in accordance with section 5515.01 of the Revised Code."

The proposed activities here involve the sale of various motorist-related services. As such, the corporation would need a permit from the Director of Highways, issued under Section 5515.01, Revised Code. That Section allows the Director to issue such a permit to any individual, firm, or corporation to use or occupy a portion of a road or highway. Various conditions are specified under which the permit may be given. None of these would prevent this corporation from providing the travel information services. Thus, I can find no restrictions against such activity within Section 5515.07 or its related Sections.

However, the building of sanitary facilities by the state, and the leasing of public lands, raises a question as to whether this would be an authorized expenditure of public funds. Article VIII, Section 4, Ohio Constitution, states:

"The credit of the state shall not, in any manner, be given or loaned to, or in aid of, any individual association, or corporation whatever; nor shall the state ever hereafter become a joint owner, or stockholder, in any company or association in this state, or elsewhere, formed for any purpose whatever."

This Section and related Sections have been interpreted to mean that public funds must be used for public purposes only and not for private gain. Kohler v. Powell, 115 Ohio St. 418 (1926). Recent cases, however, allow the expenditure of public funds even if they do provide private gain, so long as the underlying and primary purpose is a public one. Bazell v. City of Cincinnati, 13 Ohio St. 2d 63 (1968). In that case, the City of Cincinnati sought to erect a stadium and rent it to a private corporation for profit. (Municipal corporations are similarly limited in their expenditure of public funds by Article VIII, Section 6, Ohio Constitution.) The Supreme Court of Ohio held that such action did not contravene the Constitution. It concluded that if the outlay of public funds is for a valid public purpose, even though it entails some private gain, it can be a legitimate expenditure of public funds. Thus, for the proposal to be a legitimate expenditure of public funds, it must have an underlying public purpose.

The travel information centers provide services to the public. These services, although producing some gain to the corporation, are helpful to the average motorist, and cost him and the state nothing; the underlying public purpose is the free distribution of

travel information. These centers are analogous to the restaurant plazas of the Ohio Turnpike, which are leased by the state to private corporations for profit. These plazas have been determined to be "public property used for public purposes, even though leased to private persons." Carney v. Ohio Turnpike Commission, 167 Ohio St. 273 (1958). In that case, the plazas were exempted from taxation because of their being a public property used for public purposes. I feel the information centers more easily fit the definition of "public property used for public purposes", than the plazas, there being no charge for the travel information services. Thus, the travel centers do have an underlying public purpose, allowing the state to spend public funds for their construction.

The alternative proposal is that the state invest in the initial outlay in return for a fixed percentage of the gross advertising receipts. If the use of the word "invest" implies that the state would obtain some interest in the corporation, whether as joint owner, stockholder, or anything similar, such a proposal would clearly be unacceptable, for Article VIII, Section 4, Ohio Constitution, prohibits the state from extending its credit to, or becoming a joint owner or shareholder in, any corporation or association. If, on the other hand, the proposal simply means that the state will construct the information centers in the rest areas and then lease them to the corporation for a fixed percentage of gross receipts, or any similar arrangement, I can see no real distinction between this plan and that already discussed in the answer to your first question. This is, of course, essentially similar to the contracts between the Ohio Turnpike Commission and the corporations which operate restaurant plazas. Carney v. Ohio Turnpike Commission, *supra*. And your Department presently has quite similar contracts with telephone companies under which it leases space in highway rest areas for telephone installation in exchange for a percentage of the receipts. Arrangements of this nature do not amount to the conveyance to the state of the type of ownership interest forbidden by the Constitution.

In specific answer to your question it is my opinion, and you are so advised, that:

1. The state may lease ground in interstate highway rest areas to private corporations which will install information centers and will operate them for the purpose of serving the highway-using public and selling advertising space.
2. The state cannot participate in an initial financial outlay or other financial relationship which would give the state any ownership interest in the corporation operating an information center in an interstate highway rest area.